Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1972

No. 73-98

L & A CREATIVE ARTS STUDIO, INC.,
Petitioner

v.

THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA and THE DEPARTMENT OF H.U.D. et al., *Respondents*

WILL-TEX PLASTICS MANUFACTURING, INC.,
Petitioner

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GEORGE ROMNEY, Secretary, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners, L&A Creative Arts Studio, Inc., and Will-Tex Plastics Manufacturing, Inc. pray that a Writ of Certiorari issue to review the judgments of the United States

Court of Appeals for the Third Circuit entered May 21, 1973, in the above-entitled cases.

In conformity with Supreme Court Rule 23(5), 28 U.S.C. Supreme Court Rules, a single Petition for Writ of Certiorari is presented for both cases.

OPINIONS BELOW

The opinion of the Court of Appeals in L&A Creative Arts Studio, Inc., as yet unreported, appears at Appendix A, infra. The order of the District Court for the Eastern District of Pennsylvania in L&A Creative Arts Studio, Inc., as yet unreported, appears in Appendix B, infra. The opinion of the Court of Appeals in Will-Tex Plastics Manufacturing, Inc., as yet unreported, appears at Appendix C, infra. The opinion of the District Court for the Eastern District of Pennsylvania in Will-Tex Plastics Manufacturing, Inc., as yet unreported, appears at Appendix D, infra.

The judgments of the Court of Appeals were entered on May 21, 1973. Timely Motions for Stay of Mandate were filed, and were granted, allowing petitioners herein to and including July 11, 1973, to file Petitions for Writ of Certiorari.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 confers substantive rights upon the class of citizens encompassed by said legislation?

2. Whether the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to persons who have been or will be displaced from property acquired in a federally assisted project after the effective date of the Act, but where the project was commenced prior to the effective date?

3. Whether a state agency and its federal funding department is estopped from denying the fact and date of condemnation in federal court proceedings to secure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, where under substantive state law a property acquired by a state agency in lieu of condemnation is, in fact and law condemned and that the date of condemnation was after the effective date of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970?

4. Whether an aggrieved citizen has standing to resort to the judicial process to prevent further federal funding until there is obtained compliance, where a state agency in a federally assisted project refuses to comply with the substantive mandates of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and both it and its federal funding department do not provide a forum to entertain grievances concerning the said refusals?

STATUTORY PROVISIONS INVOLVED

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et. seq. provides, in pertinent part, as follows:

§4631. *Federal share of costs*

(a) The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in

the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

Pub.L. 91-646, Title II, §211, Jan. 2, 1971, 84 Stat. 1900.

§4633. *Regulations and procedures.*

(a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter.

Pub.L. 91-646, Title II, §213, Jan. 2, 1971, 84 Stat. 1900.

§4651. *Uniform policy on real property acquisition practices.*

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written state-

ment of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 258a of Title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall in-

tentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

Pub.L. 91-646, Title III, §301, Jan. 2, 1971, 84 Stat. 1904.

§4652. *Buildings, structures and improvements*

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b) (1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the

tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

Pub.L. 91-646, Title III, §302, Jan. 2, 1971, 84 Stat. 1905.

Section 221 of Public Law 91-646, provides in pertinent part, as follows:

§221

(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [see Short Title not under this section] shall take effect on the date of its enactment [Jan. 2, 1971].

(b) Until July 1, 1972, sections 210 and 305 [sections 4630 and 4655 of this title] shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections [sections 4630 and 4655 of this title] shall be completely applicable to all States.

Title 42 of the Code of Federal Regulations Housing and Urban Development, enumerating regulations applicable to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, provides in pertinent part:

§42.190 *Appeals procedure—grievances.*

Any person aggrieved by a determination as to eligibility for, or the amount of, a payment under the regulations in this part may have his claim reviewed or reconsidered by the head of the State agency or his authorized designee, in accordance with such procedures as the State agency shall have established for such review or reconsideration. Where such person is not satisfied by such review or redetermination, he is entitled to redetermination of his claim by HUD. Any person or class of persons may similarly seek review and revision of any schedules with respect to payments under the regulations in this part.

STATEMENT OF THE CASE

These are actions by Petitioners against the United States Department of Housing and Urban Development (hereinafter "HUD") and its responsible officials, and the Redevelopment Authority of the City of Philadelphia (hereinafter Redevelopment Authority), and its responsible officials, seeking to enjoin use of Federal funds by the Redevelopment Authority until it complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq (hereinafter "Uniform Relocation Act"). The District Court for the Eastern District of Pennsylvania, upon motion, dismissed these actions and thereafter denied motions for reconsideration. The Third Circuit Court of Appeals affirmed.

Petitioner Will-Tex Plastics Manufacturing, Inc. (hereinafter Will-Tex) is a corporation engaged in the design, manufacture, assembly, and sale of plastic components. Petitioner L&A Creative Arts Studio, Inc. (hereinafter "L&A") is a corporation engaged in the manufacture and design of commercial art work, displays, and advertising. Petitioner L&A was, and Petitioner Will-Tex is, a tenant in the same multi-tenanted commercial property. Each petitioner has, in said premises, its permanently installed and immovable machinery, equipment and improvements necessary for the conduct of their industrial activities. Said property was acquired by the Redevelopment Authority as part of the federally assisted and sponsored Callowhill East Urban Renewal Project. HUD is the federal financing agent charged with the administration of this project. The loan and grant contract under which this project was instituted was amended by operation of law on January 2, 1971 to incorporate the provisions of the Uniform Relocation Act.

Under the Redevelopment Authority's Urban Renewal Plan which was approved by HUD and formed the basis for the loan and grant contract between HUD and the Redevelopment Authority, the subject multi-tenanted prem-

ises was excluded from formal condemnation which occurred on August 2, 1968. The Urban Renewal Plan was thereafter amended whereby the subject premises was required to be demolished.

Petitioner Will-Tex made formal request upon Redevelopment Authority, to give it a statement and summary of the basis for which Redevelopment Authority would offer it and to pay to it just compensation for its machinery, equipment and improvements; to authorize the move of its goods and inventory from the said premises and to determine its rent obligation for occupancy of the subject premises on a short term basis. In accordance with the practice and procedures of Redevelopment Authority, Will-Tex submitted to Redevelopment Authority its expert appraisal of its machinery, equipment and improvements, the valuation of which was $74,736.00. Redevelopment Authority did not dispute said valuation but has refused and continues to refuse to give to Will-Tex a statement and summary of the basis for any offer of just compensation it may make.

When this litigation was instituted, Redevelopment Authority had declined to act upon Will-Tex's request that its rent obligation be established upon a short-term basis and had not authorized any common carrier in accordance with its approved tariffs to move Will-Tex's goods and merchandise.

Petitioner L&A submitted to Redevelopment Authority its expert appraisal of its machinery, equipment and improvements, the valuation of which was $138,585. The Redevelopment Authority and condemnee entered into a stipulation of settlement of the condemnation claim of L&A in the amount of $115,000. L&A has made demand (and this matter is in litigation in the Pennsylvania State courts) for payment under the terms of this settlement. Petitioner L&A was ordered to vacate the premises and has submitted moving bills to accomplish its moving to a new location. Redevelopment Authority has refused to pay the moving claim without explanation. Before its eviction from its

premises. L&A had requested that its rent obligation be established on a short-term basis and therefor a reduced rental obligation to apply retroactively effective January, 1971. Redevelopment Authority declined to act upon that request.

Petitioners requested Redevelopment Authority and then HUD for the right to present their grievances concerning the failures and refusals of Redevelopment Authority, as aforesaid. HUD had established no regulations establishing a procedure for it or Redevelopment Authority to entertain grievances such as now involved and neither it nor Redevelopment Authority have afforded any substantive and real procedures or forum by which those alleged failures to comply with the Uniform Relocation Act would be entertained.

After institution of this litigation Redevelopment Authority informed plaintiff that it had been directed by HUD to reduce Will-Tex's rent obligation by $175.00 per month, which said reduction would be retroactive effective as of April 15, 1971. Plaintiff was not afforded an opportunity to establish that the appropriate reductions should have been as of January, 1971 and should have been decreased at least $350.00 per month.

Both petitioners were ordered to vacate the premises as of April 15, 1971.

REASONS FOR GRANTING THE WRIT

The questions presented here are of profound significance at this juncture in history. Urban redevelopment is one of the most important avenues of rebirth and resurgence of our society. However, the history of eminent domain practices is rife with inequities. Families and businesses have been and are being harmed by numerous and variegated redevelopment agencies, all in the name of the "public good." To prevent such inequities, the Congress of the United States enacted the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

This court has not ruled upon the questions presented in this Petition, the gravamen of which is that there has been a failure of compliance by HUD with the congressional granting of rights under the Uniform Relocation Act. The dire circumstances of our cities, and the healing of the cancerous decay in them, mandate the granting of this petition for Writ of Certiorari in that the questions presented relate to great numbers of aggrieved persons, rather than just petitioners.

The Uniform Relocation Act has for its purpose and accomplished intent, the establishment of rights so that persons directly affected by condemnations in federal and federally assisted projects and programs will not suffer harm and injury. It is:

> ". . . the culmination of lengthy and extensive efforts to develop legislation establishing a uniform policy for the fair and equitable treatment of persons who are displaced, or have their real property taken for Federal and federally assisted programs. . . ."
>
> "It provides a humanitarian program of relocation payments, advisory assistance, assurance that comparable, decent, safe and sanitary replacement housing will be available for displaced persons prior to displacement, economic adjustments, and other assistance to owners and tenants displaced from their homes, farms and places of business. It establishes a uniform policy on real property acquisition practice for all Federal and federally assisted programs."

"The committee believes that this bill as reported provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal and federally assisted programs."

Congressional Record, H. R. No. 91-1656, pages 8290, 8292.

The Uniform Relocation Act contains the following substantive provisions applicable to and violated by either HUD or Redevelopment Authority or both in the instant cases:

Section 4631(c) requires amending existing loan and grant contracts to conform to the Uniform Relocation Act and the payments and benefits provided thereunder.

It provides:

"Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 4630 and 4655. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635 and 4655.

Section 4633(b)(3) requires HUD to establish regulations for the handling of grievances such as here involved and requires Redevelopment Authority to entertain such grievances.

It provides:

"(b) The head of each Federal agency is author-

ized to establish such regulations and procedures as he may determine to be necessary to assure—

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency."

Section 221(a)(b) of Public Law 91-646, The Uniform Relocation Act, declares that the Act shall become immediately effective, the only exception being that where a State cannot comply.

It provides:

"(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 (4630) and 305 (4655) shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States." (conversions added).

Section 4651 establishes as legislative policy a standard of fair dealing which requires in part that offers shall be based on approval appraisals, not on arbitrary figures and be in an amount at least equal to the approved appraisal; that the condemnor provide the condemnee with a statement and summary of the basis of its offer; and that offers not be used to coerce settlement.

Section 4652(a) requires that improvements on as well as real estate proper be acquired.

It provides:

"Notwithstanding any other provision of law, if

the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put."

In the instant case, the subject premises, a multi-story building located at 408-416 N. 3rd Street, Philadelphia, Pennsylvania, was acquired by the Redevelopment Authority by purchase in lieu of formal condemnation. Thereafter, it treated your petitioners herein, Will-Tex and L&A, as condemnees, tendering offers of settlement, and issuing notices to vacate the premises on April 28, 1971. In the matter of L&A, a partial settlement was made by the Redevelopment Authority. The Redevelopment Authority is therefore estopped under Pennsylvania State law from denying that the subject premises was condemned by it subsequent to January 2, 1971.

Since this is a Federally assisted project as contrasted with a direct Federal project, and the full administration and processing is vested in a State agency, acting under state law, the Federal Defendants are bound by the same estoppel doctrine that precludes the Redevelopment Authority from adopting the position now taken by the Federal Defendants.

The Uniform Relocation Act applies to federal projects and to federally assisted projects. The applicability of Titles II and III of the Uniform Relocation Act becomes clear when one considers the nature of federal funding and what steps are entailed when the Federal Government condemns private property as contrasted to the steps involved when a State or one of its subdivisions condemns property in a federally assisted project. In direct federal projects congressional appropriation is the authorization to condemn or acquire. In federally assisted projects congressional appropriations are made to specific federal departments for

specific purposes. The federal departments then enter into loan and grant contracts with State agencies. Utilization of the federal funds is by the latter. Before the execution of loan and grant contracts, the public agency, as here Redevelopment Authority, first must make application to the federal government, as here HUD, and HUD must approve the application. It is at some subsequent time, perhaps as much as five years, that the loan and grant contract is executed. Thereafter, the condemnations and subsequent displacements and dislocations will occur.

Title II of the Uniform Relocation Act is captioned Uniform Relocation Assistance. Title III is captioned Uniform Real Property Acquisition Policy. Both Titles interlap and interrelate to each other.

Section 4630 provides, with regard to federally assisted projects, that on or after the effective date of the Act, no federal agency shall approve or execute any loan or grant contracts providing federal financial assistance to pay all or any part of any program unless it receives assurance that the State agency will provide the payments and relocation assistance set forth in Title II.

The language of Section 4655 is substantially identical to Section 4630 and similarly provides, that no federal financial assistance will be made available unless the State agency gives adequate assurance that it will comply with the policies and provisions of Title III.

Neither Section 4630 nor 4655 have anything to do with the effective date of the Uniform Relocation Act. Both apply to the initial step of federal approval prior to acquisition and merely state that where approvals are required after January 2, 1971, the Federal funding agency will not take action unless it receives assurance that when condemnations thereafter occur the State agency will and can comply with the mandate of the Uniform Relocation Act.

Where, as in the case sub judice, federal approval was obtained and the loan and grant contract executed prior to the enactment of the Uniform Relocation Act, it is hard to see how any federal agency could have been perceptive

enough to have required assurances with unenacted federal legislation. Sections 4630 and 4655, were not intended to cover that situation. Moreover, if Congressional intent had been as the federal defendants suggest, neither Sections 221 of Public Law 91-646 nor 4631(c) of the Uniform Relocation Act, both of which are generally applicable, would have been part of the enactment.

Section 221 declares that the Uniform Relocation Act "shall take effect on the date of its enactment." That date is January 2, 1971. The legislative intent is clear beyond cavil. H.R. No. 91-1656 at pages 8310-8311 states:

> "Subsections (a) and (b) of this section make the bill fully effective on the date of enactment, except insofar as a State agency is unable to comply fully with all its provisions. The bill becomes fully effective in such a State as soon as it can comply with all provisions of the bill, and, in every case, after July 1, 1972.
>
> The Committee believes that there is no justification for any delay in the effective date of the bill except as required by State law. It is recognized that the necessary regulations cannot be issued upon enactment, and that initial payments may have to be temporarily delayed if the provisions are made effective as of the date of enactment. However, the inequalities involved in denying relocation payments and assistance for displacements occurring during a period after the date of enactment, far outweigh the administrative burden. Eligibility for benefits rest upon enactment even though payments may be delayed pending implementing regulations."

Section 4631(c) provides:

> "Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall

be amended to include the cost of providing payments and services under sections 4630 and 4655 . . ."

In the case sub judice, the loan and grant contract under which the Redevelopment Authority commenced its steps to undertake the acquisition of the subject premises under a federally assisted project and the attempted displacement of Appellant was amended by operation of law to include the cost of providing all of the payments and services enacted in Titles II and III of the Uniform Relocation Act.

If Congress had intended to restrict the applicability of the Uniform Relocation Act to apply only to condemnations occurring pursuant to loans and grants made after January 2, 1971, Section 211(c) would have no place in the law. If Congress had intended Title III of the Uniform Relocation Act to apply to certain pre-existing loan and grant contracts, but only where real estate was acquired after the effective date of the Uniform Relocation Act, it could have used the same language as it did in Sections 4630 or 4655. Section 4631(c) does not have the words "acquisition on or after the effective date of the Act" because the same was not the intent.

The provisions of the Uniform Relocation Act which are here applicable evolve from existing legislation—The National Housing Act of 1964, as amended. In a case in all respects similar to the instant case, *Powelton Civic Home Owners Association v. Department HUD*, 284 F. Supp. 809 (E.D. Pa. 1968), the Plaintiffs sought injunctive relief against HUD as "aggrieved persons" under the National Housing Act and sought to restrain disbursement of federal funds to the Philadelphia Redevelopment Authority for HUD's failure to provide the Plaintiffs with a procedural forum to air their grievances in accordance with the mandate of National Housing Act of 1949 and as amended. It was held that the Plaintiff, citizens of *Powelton*, had set forth a justiciable cause of action in view of the failure of HUD to provide the Plaintiffs with an appropriate forum.

The Uniform Relocation Act is not an advisory Act, but gives rights to persons that may be affected by a federal or federally assisted condemnation as its statement of policy clearly sets forth. Aggrieved persons, under the Act, are to be provided with a procedural forum for hearing their grievances. The gravamen of this complaint is that HUD has failed to provide petitioners with the machinery implicitly set forth in the Uniform Relocation Act. The District Court erred when it abandoned its constitutional and jurisdictional responsibility for insuring due process to the petitioners.

In *Merge v. Sharott*, 341 F. 2d 989 (3rd Cir. 1965), the Plaintiff occupied two properties for the conduct of one integrated business. Suit was instituted to compel the Regional Administrator of HHFA (the predecessor of HUD) to federally fund Plaintiff's moving expenses from both properties, even though only one had been condemned. The Court of Appeals held that the legislative intent was to create substantive rights, the Plaintiff was in the class of persons that the legislation desire to protect, that the Plaintiff had standing and had presented a justiciable claim for relief and that the intent of the legislation was to create substantive rights.

In *Western Additional Community Organization v. Robert Weaver, Sec. of HUD*, 294 F. Supp. 433 (N.D. Cal. 1968), the Court held that where a federal statute clearly reflects congressional purpose to protect the interests of a particular class, persons within that class have valid standing to require compliance. In that case, HUD was required to obtain "satisfactory assurance" from the local development agency that the rights of certain displaced persons would be adequately protected as the result of a federally assisted condemnation program. The Court held that it can and would, by injunctive relief, compel HUD to comply with the statutory requirements and regulations promulgated thereunder, not merely in form, but in substance. The test for judicial reviewability is not whether the statute provides for review, but whether the statute precludes it.

The determination by the District Court that the Uniform Relocation Act does not grant substantive rights is inconsistent with judicial precedent and legislative intent.

The case relied upon below by the Federal Defendants to seek a dismissal of this action has no bearing whatever upon this case. *Taliafero v. Stafseth*, 455 F. 2J 207 (C. A. Mich. 1972) concerns the Federal-Aid Highway Act of 1969 which unlike the Uniform Relocation Act did not provide that existing loan and grant contracts would be amended by operation of law. The Uniform Relocation Act, unlike the Federal-Aid Highway Act, is concerned with displacement from property after the date of enactment and not with the date of acquisition or condemnation.

Two recent decisions, one in the Eastern District of Pennsylvania and one in the Northern District of California make clear that the controlling factor is the date when displacement occurs. Neither the date of condemnation by the local public agency in a federally assisted project nor the date of federal approval of the federally assisted project is relevant to determine the applicability of the Uniform Relocation Act. *Golden Dawn Shops, Inc. v. HUD*, 333 F. Supp. 874 (E.D. Pa. 1971), concerned the same defendants as the case sub judice, a condemnation of property which occurred prior to the enactment of the Uniform Relocation Act and an attempted dispossession of the Plaintiff. The Plaintiff sought an injunction against Redevelopment Authority's activities with respect to the project until Redevelopment Authority complied with the statutory provisions contained in the Uniform Relocation Act concerning relocation. The Court refused to dismiss the action.

Similarly, in *LaRaza Unida v. Volpe*, 337 F. Supp. 221 (D.C. Cal. 1971), where federal appeal to a local project occurred more than four years prior to enactment of the Uniform Relocation Act, the Court declaring the date of displacement to be solely material quoted the House Report accompanying the Bill as follows:

"If a person moves as a result of such notice to

vacate it is immaterial whether or not the real property is actually acquired.

It is immaterial whether the real property is acquired before or after the effective date of this bill, or by Federal or State agency; or whether federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a federal or federally assisted program or project. For example:

(a) A number of State Highway Departments frequently acquire rights-of-way for Federal-aid Highways . . . with non-federal funds and seek federal financial assistance only for the actual construction work. Persons required to move from such rights-of-way are recognized as displaced persons under the relocation provisions of the Federal-Aid Highway Act of 1968 and this bill affirms that principle."

1970 U. S. Code Congressional and Administrative News 5853.

The last issue is whether by reason of the enactment of amendments to the Eminent Domain Code of Pennsylvania on December 29, 1971, Pennsylvania law has supplanted the Uniform Relocation Act and while initially it might have had jurisdiction, the action by the Pennsylvania Legislature has removed and vacated the jurisdiction of the Federal Courts.

That the Uniform Relocation Act was not affected by any enactment of the Pennsylvania Legislature is clear. Section 221 of the Uniform Relocation Act recognized that certain State agencies would not have the authority or power to implement the mandatory provisions of that law. Accordingly, where there existed neither power nor authority States were given until July 1, 1972, to pass enabling legislation so as to permit their agencies and subdivisions to comply and fulfill the mandate of the Uniform Relocation Act. Such additional time was not required in Pennsylvania. Redevelopment Authorities, such as Rede-

velopment Authority, were created under the Urban Redevelopment Law, Act of May 24, 1945, P. L. 991, as amended. Under that legislation, Redevelopment Authorities have full power to comply with and act as federal agents in federally assisted projects to implement and apply all of the provisions of the Uniform Relocation Act. No further enabling legislation was required. Enabling legislation was required to enable the Commonwealth and certain other political subdivisions of the State, other than Redevelopment Authorities or Housing Authorities, to comply with the Uniform Relocation Act. Thereafter, Pennsylvania did enact such enabling legislation; however, no provision of which concerns the violations of the Uniform Relocation Act which are alleged here involved.

Even assuming arguendo that State Legislation could supplant the Uniform Relocation Act, there can be no supplanting in this case. This is not a suit for damages. This is a suit to require Redevelopment Authority in a federally assisted project to have a requisite standard of morality in its dealings with condemnees such as petitioners. That standard is described in the Uniform Relocation Act. To say that under State law a condemnee ultimately may recover full just compensation after perhaps six years of litigation, does not make proper present callousness and disregard of the mandatory standards of conduct for governmental dealings with condemnees. Damages for the unlawful destruction of economic life is insufficient. The Uniform Relocation Act was designed to prevent the involuntary taking of private property by an all powerful government or governmental agency without certain requirements. No amount of State legislation can supplant the Uniform Relocation Act.

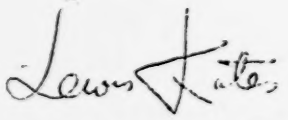
The District Court relied upon the fact that HUD had promulgated regulations under the Uniform Relocation Act and that therefor petitioners by not having exhausted their administrative remedies had no standing. Regulations have been promulgated under Section 4633(b)(3) of the Uniform Relocation Act and are set forth in, 42 C.F.R.

42.190. The regulations insofar as they apply to the case sub judice have not afforded appellant the administrative remedy it is entitled under the Uniform Relocation Act. The Redevelopment Authority has failed and refused to provide the requisite forum and it is by reason of its failure and refusal that this action was commenced. What must not be lost sight of is the fact that neither the Redevelopment Authority nor HUD have provided any semblance of administrative review in this matter.

CONCLUSION

It is respectfully submitted that the issues presented herein are so substantial, and so far reaching in nature that they mandate the granting of this Petition for Writ of Certiorari.

Respectfully submitted,



LEWIS KATES
Attorney for Petitioners

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 72-1742

L & A CREATIVE ARTS STUDIO, INC.,
Appellant

v.

THE DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, ET AL.

(D. C. Civil Action No. 71-2761—Eastern Dist. of Pa.)

Submitted Under Third Circuit Rule 12(6)
May 21, 1973

Before KALODNER, ALDISERT and ADAMS, *Circuit Judges*.

JUDGMENT ORDER

After consideration of all contentions raised by the appellant and being persuaded by the reasoning of Judge Donald W. VanArtsdalen in *Will-Tex Plastics Manufacturing, Inc. v. The Department of Housing and Urban Development, et al.*, — F. Supp. — (E.D. Pa. 1972), it is OR-

DERED AND ADJUDGED that the judgment of the district court is affirmed.

Costs taxed against appellant.

By the Court,

ALDISERT,
Circuit Judge

Attest:

THOMAS F. QUINN, *Clerk*

Dated: May 21, 1973

APPENDIX "B"

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 71-2761

L & A CREATIVE ARTS STUDIO, INC.

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

ORDER

And now, this 29th day of June 1972, being convinced that the law controlling the instant case is correctly set forth in the well reasoned opinion of the Honorable Donald VanArtsdalen in Will-Tex Plastics Manufacturing, Inc. v. The Department of Housing and Urban Development et al. (C. A. 72-153, June 29, 1972), it is hereby ordered and decreed that the complaint be dismissed for failure to state a cause of action, and plaintiff's motion for a preliminary injunction be denied and dismissed.

RAYMOND J. BRODERICK, *J.*

APPENDIX "C"

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-1743

WILL-TEX PLASTICS MANUFACTURING, INC.,
Appellant

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

(Eastern Dist. of Penna.—Civil No. 72-153)

Submitted Under Third Circuit Rule 12(6)
May 21, 1973

Before: KALODNER, ALDISERT and ADAMS, *Circuit Judges.*

JUDGMENT ORDER

After consideration of all contentions raised by appellant, and being persuaded by the reasoning of the district court, — F. Supp. — (E.D. Pa. 1972), it is ORDERED

AND ADJUDGED that the judgment of the district court is affirmed.

Costs taxed against appellant.

By the Court,

ALDISERT,
Circuit Judge

Attest:

THOMAS F. QUINN, *Clerk*

Dated: May 21, 1973

APPENDIX "D"

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 72-153

WILL-TEX PLASTICS MANUFACTURING, INC.

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Memorandum Opinion and Order

VANARTSDALEN, J., June 29, 1972:

Plaintiff seeks injunctive relief to halt all redevelopment programs in the City of Philadelphia and all federal assistance for such projects until and unless plaintiff, a tenant in a property acquired by the Redevelopment Authority of the City of Philadelphia (hereafter called "RDA") is offered "just compensation" for machinery and equipment plaintiff placed on the premises, and is provided with "a written statement of and summary of the basis for the amount offered."[1] Plaintiff asserts entitlement to such relief pursuant to the "Uniform Relocation Assistance and Real Property Acquisition Policies Act", Public Law 91-646, January 2, 1971, 42 U.S.C.A. §4601 through §4653 inclusive (hereafter called the "Policies Act").

Defendant, Department of Housing and Urban De-

1. See complaint—prayer for relief.

velopment (hereafter called "HUD") and RDA[2] have filed motions to dismiss the complaint pursuant to Federal Rules of Civil Procedure, Rule 12(b)(1)—lack of subject matter jurisdiction—and Rule 12(b)(6)—failure to state a cause of action. Plaintiff has moved for a preliminary injunction.

Plaintiff contends that RDA "a local public agency"[3] that receives federal financial assistance from HUD condemned certain property in Philadelphia pursuant to its urban renewal plan; and that by reason of such condemnation and notice to vacate, plaintiff, a tenant of a portion of the premises, is entitled to compensation for machinery and equipment on the premises that cannot be removed. Plaintiff asserts that RDA and/or HUD have failed to comply with mandatory procedures set forth in the Policies Act, and that until there is such compliance, plaintiff is entitled to the relief sought.

Plaintiff asserts that RDA and/or HUD have failed to comply with three sections of the Policies Act as follows:[4]

1. Section 301(3). RDA has not provided plaintiff with a written statement of and summary of the basis for the amount established by RDA as just compensation for plaintiff.

2. Section 302. RDA has offered plaintiff no sum for plaintiff's improvements and machinery and equipment installed on the premises.

3. Section 301(6). RDA has refused to adjust the rent charged plaintiff "to reflect the fact that it terminated [plaintiff's]occupancy under its written lease and permitted it to remain solely upon a month to month basis."

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2. RDA is not named in the caption as a party defendant, nor was it served as an entity. Paragraph 3 of the complaint refers to "defendant RDA", and RDA has filed pleadings. For purposes of this decision, RDA will be treated as if plaintiff had filed and served the complaint against RDA as a defendant.

3. Paragraph 2 of the complaint. Under §101(3) of the Policies Act such an agency is defined as a "state agency."

4. Paragraph 7 of the complaint.

Analysis of the Policies Act and its purposes is required. The Policies Act was adopted on January 2, 1971. Counsel have referred to no cases that have interpreted the Act. Some reference to the Legislative History may be helpful.

The Policies Act contains provisions for relocation assistance for displaced persons under Subchapter II. Plaintiff makes no allegation that defendants have failed to comply with any provisions of Subchapter II, nor does plaintiff claim entitlement to any relief under Subchapter II as a displaced person.[5]

Subchapter III, entitled "Uniform Real Property Acquisition Policy", concerns itself primarily with establishing uniform policies and guidelines that federal agencies, having powers of condemnation, are to utilize in all condemnations. Section 301 states in the preamble that "in order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for the owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practical, be guided by the following policies." Section 305 of the Policies Act makes the guidelines of Section 301 applicable to state agencies receiving federal assistance as to all acquisitions of real property *on or after January 2, 1971.* Section 305 requires that the head of the federal agency making the grant receive "satisfactory assurances from the State agency" that it will be guided, to the greatest extent

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5. Section 101(6) defines a "displaced person" as one who, after January 2, 1971, moves from real property, or moves his personal property from real property. . . ." Plaintiff does not allege that it has moved or that it has removed any personal property at any time from the premises, and the complaint makes it apparent that plaintiff is still in possession of the premises with its personal property located thereon. Plaintiff is not a "displaced person" as defined in the Policies Act.

practical under state law, by the same acquisition policies as set forth in Section 301.[6]

A reading of the various provisions of the Policies Act leads to the conclusion that the Policies Act did not intend to confer upon parties in the position of plaintiff any right to obtain any relief in the federal courts. Section 102 of the Policies Act provides that the policy guidelines set forth in Section 301 "create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation." Section 102 further provides that the Policies Act shall not create "in any condemnation proceedings brought under the power of eminent domain, any element of value or damage not in existence immediately prior to January 2, 1971."

The Legislative History as reported in House Report No. 91-1656, on Section 102 is worth noting:

> "[]he provisions of the uniform policy on land acquisition practices, in section 301, do not create any rights or liabilities in any person and do not affect the validity of any acquisition by purchase or condemnation.
>
> "The committee has considered, but does not agree with, proposals which would make the benefits provided by the bill subject to judicial review. The committee agrees with the judgment of the Department of Justice, and others, who believe that this would add an unnecessary burden to the overcrowded courts. The primary purpose of the judicial review proposals is to give recognition to the principle that such benefits should be viewed as administrative payments to displaced persons. The committee believes that this objective can be achieved by the clear language of the bill which makes relocation payments and assistance, and the availability of suitable replacement housing

6. Pennsylvania amended its Eminent Domain Code to comply with the guidelines of the Policies Act—Act No. 169, December 29, 1971, P. L. ; and Act No. 170, December 29, 1971, P. L. .

for displaced persons, matters of congressional policy and makes agency heads responsible for faithful execution. Section 213(b)(3) of the bill provides an alternate to judicial review, by requiring the heads of Federal agencies to establish regulations and procedures that will assure any person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of the payment, may have his application reviewed by the head of the Federal agency having authority over the project; or in the case of a program receiving Federal financial assistance, by the head of the State agency." U. S. Congressional Code and Adm. News, pp. 5854 and 5855.

Although plaintiff indirectly attempts to allege that there are no regulations promulgated under Section 213(b)(3) of the Policies Act,[7] judicial notice may be taken of the fact that such regulations have been promulgated.[8]

The complaint is vague as to when acquisition of the property took place.[9] The complaint avers in paragraph 5 that "RDA sought to condemn" by filing a declaration of taking in state court, docketed July Term, 1968. Ordinarily, the condemnation under state law becomes effective and title passes as of the time of filing a declaration of taking. Act of June 22, 1964, Pub. L. 84, §402(a), 26 P.S. 1-402 (Pocket Parts). This would mean that the condemnation occurred in 1968. In any event, it appears undisputed that the acquisition of the real property by RDA occurred prior to the effective date of the Policies Act, January 2, 1971. As a tenant in possession, plaintiff conceivably could have some continuing rights under the Policies Act, even

7. Paragraph 10 of the complaint.

8. F.R. Docket 71-6693, effective May 13, 1971, Vol. 36, No. 93, pp. 8785-8798 Federal Register.

9. At oral argument, defense asserted that the premises were acquired by purchase on January 8, 1969, and such was averred in the answer. The Policies Act applies to land acquisitions whether by purchase or condemnation.

though the property was acquired prior to January 2, 1971, except that Section 305 expressly provides that the Section 301 guidelines become applicable as to state agencies only as to real property acquired on or after January 2, 1971. To the extent that plaintiff asserts failures to comply with Section 301 of the Policies Act, as set forth in the Complaint, paragraph 7(a)—failure to provide a written statement of and summary of the basis for the amount established by RDA as just compensation, and 7(c)—refusal to adjust rent charges "to reflect the fact that it terminated Will-Tex's occupancy under its written lease and permitted it to remain solely upon a month to month basis," no cause of action is stated because the acquisition of the real property occurred prior to January 2, 1971.[10]

Plaintiff has one additional alleged failure to comply with the Policies Act. Plaintiff asserts that it is entitled to compensation by reason of Section 302 of the Policies Act, and that RDA has offered it no compensation for its "improvements and machinery and equipment installed in its premises."[11] Again Section 305, which makes the provisions of Section 302 applicable to state agency acquisitions receiving federal financial assistance, provides only that it shall affect real property acquisitions occurring "on or after January 2, 1971." If, indeed, plaintiff as a tenant is entitled to any compensation by reason of its equipment and machinery being irremovable from the premises, the Policies Act does not afford this plaintiff any cause for relief in this court, the acquisition occurring prior to January 2, 1971.

It should be further noted that Section 302 of the Act permits compensation to a tenant for a building, structure or improvement only if "the owner of the land involved disclaims all interest in the improvements of the tenant."[12]

10. Defendants do not concede that there has been any failure to comply even if the Policies Act guidelines of Section 301 were fully applicable.

11. Paragraph 7(b) of the complaint.

12. Section 302(2) of the Policies Act.

There is no allegation in the complaint that the owner disclaimed any and all interest in the machinery and equipment which plaintiff claims. This requirement in the Policies Act is to assure that there will be no duplication of payments. It is particularly appropriate in the present case since plaintiff nowhere in the complaint asserts what are the terms or conditions of the lease, especially as to the right or obligation, if any, of the tenant to remove any of the alleged "improvements and machinery and equipment."

As to the failure to adjust the rental charge, aside from the fact that this requirement does not apply to acquisitions prior to January 2, 1971, as hereinbefore determined, the allegation is defective in stating a cause of action even if Section 302(6) would be applicable. Section 302(6) merely states that the amount of rent charged a short-term tenant, "shall not exceed the fair rental value of the property to a short-term occupier." Even if the complaint could be construed as indirectly averring that the plaintiff was changed from a long-term to a short-term lessee, it does not ipso facto follow that rents must be adjusted or changed, since the rent charged may still equal the fair rental value to a short-term lessee.[13] Plaintiff does not aver that the rent being charged exceeds the fair market value for a month to month lease.

The allegations of this complaint fail to state a cause of action cognizable in this court. This is not to indicate that plaintiff is without a remedy. If, in fact, as a tenant, plaintiff has an interest in the machinery and equipment that cannot be removed, under the eminent domain laws of Pennsylvania, it is entitled to compensation. Plaintiff conceded at oral argument that it has a full and complete remedy at law through state court condemnation proceedings. Plaintiff's reason for seeking this court's aid was to

13. Again, at oral argument it was represented that in fact the rents had been reduced, and plaintiff did not contest this representation. The rent deduction may have occurred after filing of the complaint.

obtain its ultimate goal of a more expeditious and/or lucrative monetary settlement of its claim for damages. The Policies Act was not intended to be so utilized. The clear purpose of the Policies Act was to bring about uniform nationwide procedures in all public taking of lands by the federal government or by state agencies receiving federal financial assistance. It was contemplated by the Policies Act that state agency condemnations would still be adjudicated through state court condemnation proceedings following the procedures and rights set forth in the Policies Act.

Plaintiff conceivably could argue that its interests in the premises have never been acquired by RDA by condemnation or otherwise, and that consequently the Policies Act would not be effective as to any such attempted acquisition. In such a situation, plaintiff's present position would be exactly the same as any other tenant who receives an eviction notice from a landlord who has acquired the reversionary interest from a prior owner-landlord. That would be a matter to be determined by state law and in state courts. Should RDA attempt to acquire plaintiff's interest, if any, in the premises in violation of the procedures set forth in the Policies Act, either as to Sections 301 or 302, this would likewise be in violation of state eminent domain procedures, and plaintiff would have complete protection through state courts. The Policies Act clearly did not intend to permit the federal courts to cut off all federal funding in such a situation.

Concluding, therefore, that plaintiff has failed to state a cause of action, the complaint will be dismissed. The motion for a preliminary injunction must likewise be denied. In any event, the preliminary injunction as sought by plaintiff would have been inappropriate. Plaintiff is still in possession of the premises and there is no immediate and irreparable harm.[14] In addition, it is apparent that plain-

14. The motion for a preliminary injunction (unsigned by counsel), twice sets forth that plaintiff will suffer *irreputable* [sic] harm, but there is no allegation of immediate harm.

tiff in the final analysis seeks only monetary damages. Pennsylvania law expressly provides for detention damages for any delay in making payments. Injunctive relief of the type here sought is clearly inappropriate.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-98

L. & A. CREATIVE ARTS STUDIO, INC., ET AL., PETITIONERS

v.

THE REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA AND THE DEPARTMENT OF H.U.D., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioners allege that they are entitled to compensation under the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, although the property involved was condemned prior to the effective date of that Act; they further contend that the courts below erred in refusing to enjoin federal funding of a local redevelopment project until the compensation is paid.

Petitioners' complaints allege that they are tenants in a building condemned by the Redevelopment Authority of the City of Philadelphia (RDA) by a dec-

laration of taking filed in July 1968 (App. A, *infra*, 6; App. B, *infra*, 11). They seek "to prevent HUD and its officials and RDA and its members and officials from engaging in any activities with respect to the East Callowhill Redevelopment Area and programs in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise" (App. A, 7; App. B, 11–12) because of RDA's alleged failure to comply with Sections 301 and 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, 4652). The complaints were dismissed by the district court (Pet. Apps. B, D),[1] on several grounds: that Sections 301 and 302 of the Act do not apply to real estate acquisitions which occurred before January 2, 1971, the Act's effective date; that, in any event, no cause of action is stated; and that injunctive relief was not an appropriate remedy. The court of appeals affirmed in each case, relying on the district court opinion in *Will-Tex Plastics Manufacturing, Inc.* (Pet. Apps. A, C).

Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act provides that "Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor * * * [and] shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation" (42

[1] The court in *L & A Creative Arts Studio* relied on the opinion in *Will-Tex Plastics Manufacturing, Inc.*

U.S.C. 4651(3)). Section 302 provides that if the agency acquires any interest in real property, it shall acquire at least an equal interest in all improvements which must be removed or adversely affected as a result of the use of the real property (42 U.S.C. 4652). Finally, Section 305 prohibits federal approval of any state program involving federal financial assistance for the acquisition of real property after January 2, 1971, in the absence of adequate assurances that the state agency will comply with the policies and provisions of Sections 301 and 302 (42 U.S.C. 4655).

Petitioners assert that they are entitled to a statement of just compensation, payment for machinery installed on the premises, and a reduction in rent under the above provisions, even though they allege in their complaints that the condemnation occurred a year and a half before January 2, 1971, the effective date of the Act. They argue that the Act applies since they were not displaced from the premises until April 1971, relying on other provisions of the Act providing for "displaced persons." But Sections 301 and 302, insofar as they apply to federally assisted property acquisitions of the sort involved in the instant case, reach only programs which will result in the state acquisition of real property after January 2, 1971 (Sec. 305, 42 U.S.C. 4655).

In any event, petitioners' complaints fail to state a ground upon which relief can be granted. The district court correctly noted (Pet. App. D33–34) that Section 301 (42 U.S.C. 4651) confers no judicially enforceable rights (Section 102, 42 U.S.C. 4602). In addition, peti-

tioners have not alleged facts which would entitle them to relief under Section 302 (42 U.S.C. 4652), even if the acquisition had occurred after January 2, 1971 (Pet. App. D35–36).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.

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[2] The reference in Pet. App. D36 to Section 302(6) should apparently be to Section 301(6).

APPENDIX A

II. Complaint

1. L & A Creative Art Studio, Inc. (hereinafter referred to as "L & A"), is a Corporation with its principal place of business located at 408–16 North 3rd Street, Philadelphia, Pennsylvania, and conducting its business thereat.

2. L & A occupies a multi-story building at the above location. It designs, manufactures, displays and sells advertising, decorations, commercial art work and assessories.

3. Defendant, Department of Housing and Urban Development (hereinafter referred to as "HUD"), is the department of the Federal Government responsible under the housing and urban renewal statutes for determining whether and under what terms to provide financial assistance to local public agencies for housing and urban renewal projects; Defendant, George M. Romney, is Secretary of the Department of Housing and Urban Development; Defendant, Norman Watson, is Assistant Secretary for Renewal and Housing Management of the Department; Defendant, Theodore Robb, is the Administrator of Region II of the Department, whose jurisdiction includes the City of Philadelphia, Defendant, Douglas E. Clafin, is Defendant Robb's Acting Assistant Regional Administrator for Renewal Assistance, and Defendant, William F. Paterson, is Defendant Robb's Administrator for the Philadelphia metropolitan area. Each of the foregoing Defendants has statutory or administrative responsibilities in connection with the consideration and

applications for federal loans, grants, contracts, programs and other funding, for housing and urban renewal projects under Section 1451 et seq. of Title 42 United States Code, and each personally or by representatives or predecessors exercised such responsibilities in connection with HUD's approval of the project that is the subject of this action.

4. Defendant, Redevelopment Authority of the City of Philadelphia (hereinafter referred to as "RDA"), is the local public agency and contractor which will expend federal funds under a loan and grant or contract with HUD; Defendants, F. Bruce Baldwin, Mrs. Samuel Bellet, Robert H. Gray, John J.McCreesh, Jr., and Paul M. Lawson, are members of the RDA, and Defendant, Francis J. Myers, Jr., is the Director of RDA.

5. Jurisdiction over the foregoing claims is based upon 28 U.S.C., § 1331(a).

6. By Declaration of Taking filed in the Court of Common Pleas of Philadelphia County in July of 1968, and Docketed in that Court as of July Term, 1968, No. 2535, the RDA condemned the premises of L & A under its redevelopment area known as Callowhill East Urban Renewal Area.

7. Thereafter on August 5, 1971, L & A and RDA entered into a Stipulation of Settlement for all elements of damage under the Eminent Domain Code of Pennsylvania duly executed by its respective attorneys.

8. L & A made demand for payment under the terms of said settlement but RDA without any reason therefor has refused and continues to refuse to make payment in accordance with the terms of the settlement.

9. RDA has ordered L & A to immediately vacate its premises and in accordance with the usual procedures of RDA, L & A has submitted moving estimates

to accomplish its move to a new location. RDA has refused to accept the low bid for moving submitted by L & A and has obtained a further bid from a moving concern that was lower than those that were submitted by L & A, but which mover is not acceptable to L & A. L & A has agreed to accept as immediate compensation the amount of the low estimate obtained by RDA in order to accomplish an immediate move as required by RDA, but it reserves its right to claim further compensation from RDA in order to complete the said move which condition RDA has refused and continues to refuse.

10. This action is to prevent HUD and its officials and RDA and its members and officials from engaging in any activities with respect to the Callowhill East Urban Renewal Area in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise, because:

(a) HUD's grant loan or other funding to RDA is unlawful because RDA has failed to comply with Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971, 84 Stat. 1894, in that RDA has failed to complete its settlement with L & A and has failed to pay L & A just and reasonable moving expenses.

(b) HUD's grant, loan or other funding to RDA is unlawful because RDA has failed to comply with Section 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971, 84 Stat. 1894, in that rental charges set by RDA and demanded by it from L & A are exorbitantly higher than short term fair rental charges in this locale.

11. L & A has advised HUD as the funding arm of the federal government in this federally assisted proj-

ect of the aforementioned exorbitant rent charged by RDA of L & A and has requested advice as to whether HUD has promulgated any regulations or created any procedures for processing administratively complaints against RDA with respect to rental charges and if it had, what further steps were to be taken to perfect that complaint. This request dated October 26, 1971, remained unanswered and L & A presumes that HUD has no procedures for and will not entertain the complaint of L & A as set forth therein.

12. L & A cannot continue its business at its present location; has not been paid in accordance with the terms of a Stipulation of Settlement with RDA; has not been paid for the moving estimates; has not been paid that sum of money it will require to complete its move to a new location and has been and will be required to pay rental charges that are unfair and unreasonable to RDA unless this Court affords appropriate relief and will sustain substantial, permanent and irreparable harm and injury unless HUD takes steps to require RDA and RDA is required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Wherefore, Plaintiff prays:

(a) that this Court preliminarily and permanently enjoin RDA and HUD from committing any money or engaging in any further activity with regard to the Callowhill East Urban Renewal Area Program in and for the City of Philadelphia until RDA and HUD comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, by requiring RDA to pay to L & A compensation for damages as a result of the condemnation of its property in accordance with the Stipulation of Settlement dated August 5, 1971; by requiring HUD and RDA to comply with the aforementioned Act by paying fair and

reasonable moving charges immediately and by restraining RDA from making any claim or demand for unreasonable rental charges and to reimburse L & A for any such charges that have been made by it.

(b) such other and further relief as may be just and equitable under the circumstances.

KATES, LIVESEY & EDELSTEIN,
By LEWIS KATES,
JOSEPH R. LIVESEY,
Attorneys for Plaintiff.

APPENDIX B

II. Complaint

1. Will-Tex Plastics Manufacturing, Inc. (hereinafter referred to as "Will-Tex"), is a Pennsylvania corporation conducting an industrial and manufacturing business and operation at 414–16 North 3rd Street, Philadelphia, Pennsylvania. Will-Tex is the successor to Charles Willner, i/t/a Will-Tex Plastics and is the assignee of all the rights and interests of Will-Tex Plastics.

2. Defendant, Department of Housing and Urban Development (hereinafter referred to as "HUD"), is the department of the Federal Government responsible under the housing and urban renewal statutes for determining whether and under what terms to provide financial assistance to local public agencies for housing and urban renewal projects; Defendant, George M. Romney, is Secretary of the Department of Housing and Urban Development; Defendant, Norman Watson, is Acting Assistant Secretary for Renewal and Housing Management of the Department; Defendant, Theodore Robb, is the Administrator of Region II of the Department, whose jurisdiction includes the City of Philadelphia; Defendant, Douglas E. Clafin, is Defendant Robb's Acting Assistant Regional Administrator for Renewal Assistance, and Defendant, William F. Paterson, is Defendant Robb's Administrator for the Philadelphia metropolitan area. Each of the foregoing Defendants has statutory or administrative responsibilities in connection with the consideration and applications for federal loans, grants, contracts, pro-

grams and other funding for housing and urban renewal projects under Section 1451 et seq. of Title 42 United States Code, and each personally or by representatives or predecessors exercised such responsibilities in connection with HUD's approval of the project that is the subject of this action.

3. Defendant, Redevelopment Authority of the City of Philadelphia (hereinafter referred to as "RDA"), is the local public agency and contractor which will expend federal funds under a loan and grant or contract with HUD; Defendants, F. Bruce Baldwin, Mrs. Samuel Bellet, Robert H. Gray, John J. McCreesh, Jr., and Paul M. Lawson, are members of the RDA, and Defendant, Francis J. Myers, Jr., is the Director of RDA.

4. Jurisdiction over the foregoing claims is based upon 28 U.S.C., § 1331(a).

5. By Declaration of Taking filed in the Court of Common Pleas of Philadelphia County and docketed as of the July Term, 1968, No. 2535, RDA sought to condemn for its East Callowhill Redevelopment Area pursuant to its Urban Renewal Plan therefore. Said Urban Renewal Plan required the partial demolition and total rebuilding of premises 414–16 North 3rd Street, with displacement of Will-Tex and the other occupants of said premises or, in the alternative, to demolish entirely the said premises.

6. RDA did not prior thereto or at the time of said condemnation or at any time thereafter offer to Plaintiff proper estimate of just compensation, although it has not disputed that the fair market value of Plaintiff's machinery and equipment which as a unit cannot be disassembled, moved and reinstalled reasonably is $74,736.00.

7. This action is to prevent HUD and its officials and RDA and its members and officials from engaging

in any activities with respect to the East Callowhill Redevelopment Area and programs in the City of Philadelphia, pursuant to Loan and Grant Contracts or otherwise, because:

(a) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has not provided Will-Tex with a written statement of and summary of the basis for the amount established by RDA as just compensation.

(b) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has not offered to Will-Tex any sum for its improvements and machinery and equipment installed in its premises, to wit, 414–16 North 3rd Street, Philadelphia, Pennsylvania.

(c) HUD's grant, loan, or other funding to RDA is unlawful because RDA has failed to comply with Section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, January 2, 1971, 84 Stat. 1894, in that RDA has refused to adjust the rent charges it levied upon Will-Tex to reflect the fact that it terminated Will-Tex's occupancy under its written lease and permitted it to remain solely upon a month to month basis.

8. Will-Tex has made formal request upon RDA that it provide Will-Tex with a written statement of and summary for the basis of the amount established by RDA as just compensation but RDA has failed and refused so to do.

9. Will-Tex has made formal request upon RDA for it to comply with Sections 301 and 302 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, with regard to its rent charges as aforesaid and with regard to offering to Will-Tex its estimated just compensation for Will-Tex's improvements and machinery and equipment in its said premises, but RDA has failed and refused so to do.

10. Upon the failures and refusals of RDA as aforesaid, Will-Tex advised HUD of the same and requested the advice of HUD as the funding arm of the Federal Government for this federally assisted project if it has promulgated regulations creating procedures for processing administratively complaints against RDA and if it had, what further steps should be taken with regard to Will-Tex's complaints, as aforesaid. Will-Tex advised HUD that unless it was informed to the contrary it would presume that HUD had no such procedures and would not process administratively its complaints against RDA. No definitive action was taken by HUD.

11. Will-Tex has been given notice to vacate by RDA and by reason thereof was compelled to discontinue substantially its business activities at its present location. It cannot economically remove its machinery and equipment and it has been unable to find a relocation site. RDA has refused to make payment of just compensation or to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as aforesaid.

Wherefore, Plaintiffs pray:

(a) that this Court permanently enjoin RDA and HUD from committing any money or engaging in any further activity with regard to RDA's redevelopment programs in and for the City of Philadelphia until RDA and HUD comply with the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, and unless and until RDA and/or HUD offers just compensation to Plaintiff for its machinery and equipment and provides Plaintiff with a written statement of and summary of the basis for the amount offered by RDA as just compensation therefor.

(b) such other and further relief as may be just and equitable under the circumstances.

KATES, LIVESEY & EDELSTEIN,
By LEWIS KATES,
JOSEPH R. LIVESEY,
Attorneys for Plaintiff.